

## REMARKS

In the Office Action of January 21, 2010, claims 9, 13, 22 and 25 were rejected under 35 USC 102(e) for being anticipated by Jacobs, US Patent 6,120,775. Claim 1 of the present application is said to be directed to the same invention as claim 1 of the '775 reference. Noting that Jacobs is a co-inventor of the presently claimed invention, and the '775 patent and the present application are assigned to the same entity, the Examiner stated that the assignee is required to state which entity is the prior inventor of the conflicting subject matter.

Presuming that independent claim 9 is the present claim intended as claim 1, the rejection for anticipation over Jacobs '775 is respectfully traversed. Applicants respectfully point out that the scope of the claims in the '775 patent is limited to protecting a horse against *Streptococcus equi* infection. The present claims are directed to reducing adverse reactions in a mammal at the injection site of an attenuated bacterial vaccine.

Further to the above, it is not believed that Jacobs '775 is available as a reference. The present application is a continuing application based on USSN 09/492,206 (now US Patent 6,682,745), which is a continuation-in-part of USSN 09/123,735 (now US Patent 6,120,775). Submitted herewith for the Examiner's convenience is a copy of an AMENDMENT filed November 13, 2000 in parent application USSN 09/492,206, filed January 27, 2000, reciting that the application was "a continuation-in-part of USSN 09/123,735, filed July 28, 1998, now U.S. Patent No. 6,120,775, issued September 19, 2000."

In addition to the rejection for anticipation, the claims were rejected for obviousness under 35 USC 103(a) over Jacobs '775. For the reasons set forth above, it is not believed that Jacobs '775 is available as reference.

It is noted on the Office Action Summary that acknowledgement was made for foreign priority under 35 USC 119 being claimed, but that "None of" the certified copies of the priority documents having been received was indicated. For the convenience of the Examiner, applicants submit herewith a copy of the CLAIM TO PRIORITY UNDER 35 USC 119 submitted February 24, 2000 in parent application USSN 09/492,206, as well as a copy of the certificate. It is

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requested that the certified copy of EP 99200202.2 filed January 26, 1999 be transferred to this file wrapper.

In view of the above it is believed that all claims are in condition for allowance. Favorable action is solicited.

Applicants do not believe that any fees are due with this Response. However, if any fees are due, the Commissioner is hereby authorized to charge them to deposit Account No. 19-0365. Further, the Commissioner is authorized to charge any fees or reimburse any overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application to Deposit Account No. **19-0365**.

Respectfully submitted,

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